

# PROTECTION OF FREEDOMS ACT 2012

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## EXPLANATORY NOTES

### BACKGROUND

#### Part 4: Counter-terrorism powers

38. The Programme for Government (section 3: civil liberties) states that the Government “*will introduce safeguards against the misuse of anti-terrorism legislation*”.
39. The Home Secretary announced a review of counter-terrorism and security powers in an oral statement to Parliament on 13 July 2010 (Hansard, House of Commons, columns 797 to 809; the statement was repeated in the House of Lords at columns 644 to 652). The terms of reference of the review were published on 29 July 2010<sup>1</sup>, these set out the six key counter-terrorism and security powers to be considered by the review, namely:
- Control orders (including alternatives);
  - Section 44 stop and search powers and the use of terrorism legislation in relation to photography;
  - The use of the RIPA by local authorities and access to communications data more generally;
  - Extending the use of ‘Deportation with Assurances’ in a manner that is consistent with our legal and human rights obligations;
  - Measures to deal with organisations that promote hatred or violence; and
  - The detention of terrorist suspects before charge, including how we can reduce the period of detention below 28 days.
40. The Home Secretary reported the outcome of the review<sup>2</sup> on 26 January 2011 in a further oral statement to Parliament (Hansard, House of Commons, columns 306 to 326; the statement was repeated in the House of Lords at columns 965 to 978). Lord Macdonald of River Glaven, who provided independent oversight of the review, published a separate report of his findings<sup>3</sup>. Chapter 2 of Part 2 and Part 4 give effect to the review’s conclusions in respect of the use of RIPA powers by local authorities, stop and search powers, and the maximum period of pre-charge detention for terrorist suspects.
41. Part 5 of the Terrorism Act 2000 (“the 2000 Act”) contains ‘counter-terrorist powers’ including two police stop and search powers. Section 43 of the 2000 Act enables a constable to stop and search a person they reasonably suspect to be a terrorist to discover whether that person has in his or her possession anything that may constitute evidence that they are a terrorist (this power extends to stopping but not to searching a vehicle).

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<sup>1</sup> <http://www.homeoffice.gov.uk/publications/counter-terrorism/ct-terms-of-ref/counter-terrorism-terms-of-ref?view=Html>

<sup>2</sup> <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/review-findings-and-rec?view=Binary>

<sup>3</sup> <http://www.homeoffice.gov.uk/publications/counter-terrorism/review-of-ct-security-powers/report-by-lord-mcdonald?view=Binary>

Section 44 (together with the associated provisions in sections 45 to 47) of the 2000 Act enables a constable to stop and search any person or any vehicle within an authorised area for the purposes of searching for articles of a kind that could be used in connection for terrorism; this power does not require any grounds for suspicion that such articles will be found.

42. Following a challenge by two individuals stopped and searched under the section 44 powers in 2003, the ECtHR held on 12 January 2010, in the case of *Gillan and Quinton v UK* (Application no. 4158/05), that the stop and search powers in section 44 violated Article 8 of the ECHR because they were insufficiently circumscribed and therefore not ‘in accordance with the law’. This judgment became final on 28 June 2010 when the UK’s request for the case to be referred to the Grand Chamber of the ECtHR was refused.
43. On 8 July 2010, the Home Secretary made a statement in the House of Commons (Hansard, House of Commons, columns 540 to 548; the statement was repeated in the House of Lords at columns 378 to 386) setting out how the powers in section 44 were to operate pending the outcome of the review of counter-terrorism and security powers and subsequent enactment of replacement legislation. In particular, the Home Secretary indicated that terrorism-related stops and searches of individuals were to be conducted under section 43 of the 2000 Act on the basis of reasonable suspicion that the individual is a terrorist and that section 44 (no suspicion) was no longer to be used for the searching of individuals. The Home Office publishes annual statistics on the operation of police powers under the 2000 Act; statistics covering the quarterly period to September 2011 were published on 22 March 2012<sup>4</sup>.
44. Section 41 of and Schedule 8 to the 2000 Act brought into effect legislation on pre-charge detention which allowed the police to detain a terrorist suspect for up to seven days without charge (the maximum period of pre-charge detention for non-terrorist cases is four days). This period was increased to 14 days by section 306 of the Criminal Justice Act 2003 (“the 2003 Act”). The Terrorism Bill introduced in the 2005-06 Session by the then Government included amendments to Schedule 8 to the 2000 Act to extend the maximum period of pre-charge detention from 14 to 90 days. An amendment to that Bill to set the maximum period of pre-charge detention at 28 days was agreed by the House of Commons at Report Stage of the Bill on 9 November 2005 (Hansard, columns 325 to 387).
45. Under what is now section 25 of the Terrorism Act 2006 the 28 day maximum period of pre-charge detention is subject to renewal by affirmative order for periods of up to a year at a time, failing which the maximum period reverts to 14 days. Successive twelve-month orders were made in 2007, 2008 and 2009. The Counter-Terrorism Bill introduced in the 2007-08 session included provisions to extend the maximum period of pre-charge detention to 42 days. The relevant sections were rejected by the House of Lords at Committee Stage of the Bill on 13 October 2008 (Hansard, column 491 to 545), therefore preserving the 28 day maximum put in place by the Terrorism Act 2006.
46. Following debates in both the House of Commons<sup>5</sup> and the House of Lords<sup>6</sup>, a new order (SI 2010/645) was made on 25 July 2010 retaining the 28 day maximum for a further six months pending the outcome of the review of counter-terrorism and security powers. That order expired on 24 January 2011.
47. In her oral statement on 26 January 2011, the Home Secretary indicated that the Government would place in the Library of the House of Commons draft emergency legislation which would, if enacted, extend the maximum period of pre-charge detention to 28 days for a period of three months. The Government would bring forward such

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4 <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/counter-terrorism-statistics/hosb0412/hosb0412?view=Binary>

5 House of Commons Hansard Debates for 14 July 2010 (pt 0003)

6 Lords Hansard text for 19 Jul 2010 19 July 2010 (pt 0001)

*These notes refer to the Protection of Freedoms Act  
2012 (c.9) which received Royal Assent on 1 May 2012*

legislation if there were exceptional circumstances where this longer period may be required. Two versions of the draft Counter-Terrorism (Temporary Provisions) Bill were published on 11 February 2011 and are available at the Home Office website: [Home Office](#). The draft Bills were subject to pre-legislative scrutiny by a Joint Committee of both Houses of Parliament which reported on 23 June 2011<sup>7</sup>. The Government responded to that Report on 3 October; this response was published as a Command Paper Cm 8220 on 14 November 2011<sup>8</sup>.

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<sup>7</sup> <http://www.parliament.uk/business/committees/committees-a-z/joint-select/joint-committee-on-the-draft-detention-of-terrorist-suspects-temporary-extension-bills/news/report-publication/>

<sup>8</sup> <http://www.official-documents.gov.uk/document/cm82/8220/8220.pdf>